

REMARKS

This Amendment is submitted in response to the Office Action dated November 1, 2004. In the Office Action, the Patent Office objected to the drawings under 37 C.F.R. § 1.83(a) because the drawings do not show every feature of the invention specified in the claims. The Patent Office also objected to Claims 8, 17 and 18 because of informalities. Moreover, the Patent Office rejected Claims 1-3, 5, 11 and 14 under 35 U.S.C. §102(b) as being anticipated by *Winefordner et al.* (U.S. Patent No.: 5,503,140). Moreover, the Patent Office rejected Claims 15-18, 21 and 23 under 35 U.S.C. §103(a) as being unpatentable over *Winefordner et al.* Additionally, the Patent Office indicated that Claims 4-10, 12, 13, 19, 20 and 22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all the limitations of the base claim and any intervening claims.

By the present amendment, Applicants amended Claims 1, 8, 11, 15, 17 and 18. Applicants submit that the amendments overcome the objection to the drawings, the objection to the claims and the rejection to the claims by the Patent Office.

The Patent Office objected to the drawings under 37 C.F.R. § 1.83(a) because the drawings do not show every feature of the invention specified in the claims. More specifically, the Patent Office states that the mouthpiece able to swivel 360 degrees,

ratcheting about the regulator must be shown. The Patent Office requested new drawings to illustrate the elements. Applicants submit herewith replacement drawings that adequately show the claimed invention including the mouthpiece able to swivel 360 degrees, ratcheting about the regulator. Applicants respectfully submit that the drawings comply with 37 C.F.R. § 1.83(a). Notice to that effect is requested.

Moreover, the Patent Office objected to Claims 8, 17 and 18 because of informalities. More specifically, the Patent Office alleges that "the secured position" as claimed in Claim 8 lacks antecedent basis. Moreover, the Patent Office states that "the mouthpiece attachment position" as claimed in Claim 17 and Claim 18 lack antecedent basis. In response to the rejection, applicants have amended Claims 8, 17 and 18 to correct the lack of antecedent basis. More specifically, Claim 8 now reads "a secured position" and Claims 17, 18 now read "a mouthpiece attachment position."

The Patent Office rejected Claims 1-3, 5, 11 and 14 under 35 U.S.C. §102(b) as being anticipated by *Winefordner et al.* The Patent Office alleges that *Winefordner et al.* teaches a regulator having a chamber having a cylindrical body; a first opening on the cylindrical body wherein an exhaust valve is removably attached to the first opening of the cylindrical body; a second opening on the cylindrical body wherein a mouthpiece is removably attached to the second opening of the cylindrical body; a hose connected to the

chamber wherein the hose connects the cylindrical body to an air source. Applicants submit that the amendments to Claim 1 and Claim 11 overcome the rejection for the reasons that follow.

Winefordner et al. is owned by the applicants, and teaches a regulator of the type used for second stage regulation of air or breathing gas having a circular portion and a valve body mounted within the body. A diaphragm is mounted in the circular portion which responds to pressure differentials on either side of the diaphragm with a spring loaded poppet for valving gas. Two angled walls extend from the circular portion, each forming a plane which intersects the other, and at least one exhaust valve is mounted in each of the two respective walls which are angled to each other forming an angled cavity adjacent the valves.

Amended Claim 1 of the present invention requires a second stage regulator having a chamber having a cylindrical body. The invention has a first opening on the cylindrical body wherein an exhaust valve is removably attached to the first opening of the cylindrical body. Moreover, Amended Claim 1 requires a second opening on the cylindrical body wherein a mouthpiece is removably attached to the second opening of the cylindrical body and further wherein said mouthpiece is rotatable about the regulator and a hose connected to the chamber wherein the hose connects the cylindrical body to an air source.

Similarly Amended Claim 11 requires a second stage regulator having a chamber having a cylindrical body and a first opening on the cylindrical body. Moreover, Amended Claim 11 requires an exhaust valve removably attached to the first opening of the cylindrical body and a second opening on the cylindrical body wherein said second opening has plurality of sides thereon for attachment to a mouthpiece. Additionally, the mouthpiece is removably attached to the second opening of the cylindrical body wherein the mouthpiece has a first side adapted for insertion into a mouth and a second side having a plurality of sides contained thereon. Amended Claim 11 further requires a third opening on the cylindrical body wherein the third opening has a blanking plug contain thereon and a hose connected to the chamber wherein the hose connects the cylindrical body to the air source.

Winefordner et al. does not teach or suggest a second stage regulator having a second opening on the cylindrical body wherein a mouthpiece is removably attached to the second opening of the cylindrical body and further wherein said mouthpiece is rotatable about the regulator as required by Claim 1. Moreover, the Examiner's argument that removing the mouthpiece from the regulator constitutes rotation is inherently flawed. Rotation is defined as "to cause to turn or move about an axis or a center; to cause (a plane region or line) to sweep out a volume or surface by moving around an axis so that each of its points

remains at a constant distance from the axis." (See Webster's Dictionary)

Moreover, *Winefordner et al.* does not teach or suggest a second stage regulator having a first opening and a second opening on the cylindrical body wherein said second opening has plurality of sides thereon for attachment to a mouthpiece as required by Claim 11 of the present invention. On the contrary, *Winefordner et al.* merely teaches a regulator having a second side that may be connected to the air source, but does not have a second opening that has a plurality of sides thereon for attachment to a mouthpiece.

Under 35 U.S.C. §102(b), anticipation requires that a single reference disclose each and every element of Applicant's claimed invention. *Akzo N.V. v. U.S. International Trade Commission*, 808 F.2d 1471, 1479, 1 USPQ 2d 1241, 1245 (Fed. Cir. 1986).

Moreover, anticipation is not shown even if the differences between the claims and the reference are "insubstantial" and one skilled in the art could supply the missing elements. *Structure Rubber Products Co. v. Park Rubber Co.*, 749 F.2d. 707, 716, 223 USPQ 1264, 1270 (Fed. Cir. 1984).

In view of the foregoing remarks and amendments, the rejection of Claims 1-3, 11 and 14 under 35 U.S.C. §102(b) as being anticipated by *Winefordner et al.* have been overcome and should be withdrawn. Notice to that effect is requested.

As to the rejection of Claims 15-18, 21 and 23 under 35 U.S.C. §103(a) as being unpatentable over *Winefordner et al.*, Applicants respectfully assert that these claims are further believed allowable over *Winefordner et al.* based on the amendment to Claim 15 that further distinguishes the present invention from the prior art references for the following reasons.

Amended Claim 15 requires a method for using a second stage regulator, the method comprising the steps of: providing a regulator having a first opening, a second opening, and a third opening; providing a mouthpiece that is removably attached to the regulator wherein said mouthpiece is rotatable about the regulator at different angles; providing an exhaust means for discharging used air supply; connecting a hose from the regulator to the air source; connecting the mouthpiece to the regulator wherein the mouthpiece may be connected to the regulator in a plurality of positions; and connecting the regulator via the hose to the air source.

Winefordner et al. does not teach or suggests a method of a second stage regulator, the method having the step of providing a mouthpiece that is removably attached to the regulator wherein said mouthpiece is rotatable about the regulator at different angles as required by Claim 15.

Further, the Patent Office provided no teaching as to why one having ordinary skill in the art would have been led to modify

Winefordner et al. to create Applicants' invention. Since the Patent Office failed to establish a *prima facie* case of obviousness, the rejection of Claims 15-18, 21 and 23 under 35 U.S.C. §103(a) is improper and should be withdrawn. Notice to that effect is requested.

It is submitted that the question under §103 is whether the totality of the art would collectively suggest the claimed invention to one of ordinary skill in this art. In re Simon, 461 F.2d 1387, 174 USPQ 114 (CCPA 1972).

That elements, even distinguishing elements, are disclosed in the art is alone insufficient. It is common to find elements somewhere in the art. Moreover, most if not all elements perform their ordained and expected functions. The test is whether the invention as a whole, in light of the teaching of the reference, would have been obvious to one of ordinary skill in the art at the time the invention was made. Connell v. Sears, Roebuck & Co., 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983).

It is insufficient that the art disclosed components of Applicants' invention. A teaching, suggestion, or incentive must exist to make the combination made by Applicants. Interconnect Planning Corp. v. Feil, 774 F.2d 1132, 1143, 227 USPQ 543, 551 (Fed. Cir. 1988).

In view of the foregoing remarks and amendments, the rejection of Claims 15-18, 21 and 23 under 35 U.S.C. §103(a) as being

unpatentable over *Winefordner et al.* has been overcome and should be withdrawn. Notice to that effect is requested.

Claims 2-10 depend from Claim 1; Claims 12-14 depend from Claim 11; and Claims 16-23 depend from Claim 15. These claims are further believed allowable over *Winefordner et al.*, for the same reasons set forth with respect to independent Claims 1, 11 and 15 since each sets forth additional novel components and steps of Applicants' second stage regulator device.

In view of the foregoing remarks, Applicants respectfully submits that all of the claims in the application are in allowable form and that the application is now in condition for allowance. If any outstanding issues remain, Applicants urges the Patent Office to telephone Applicants' attorney so that the same may be resolved and the application expedited to issue. Applicants request the Patent Office to indicate all claims as allowable and to pass the application to issue.

Respectfully submitted,



Hani Z. Sayed

(Reg. No. 52,544)

Gordon & Rees, LLP
101 W. Broadway Suite 1600
San Diego, CA 92101
(619)230-7474
ATTORNEY FOR APPLICANTS



CERTIFICATE OF MAILING

I hereby certify that this **Amendment** is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to the Mail Stop Amendment Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on February 1, 2005.

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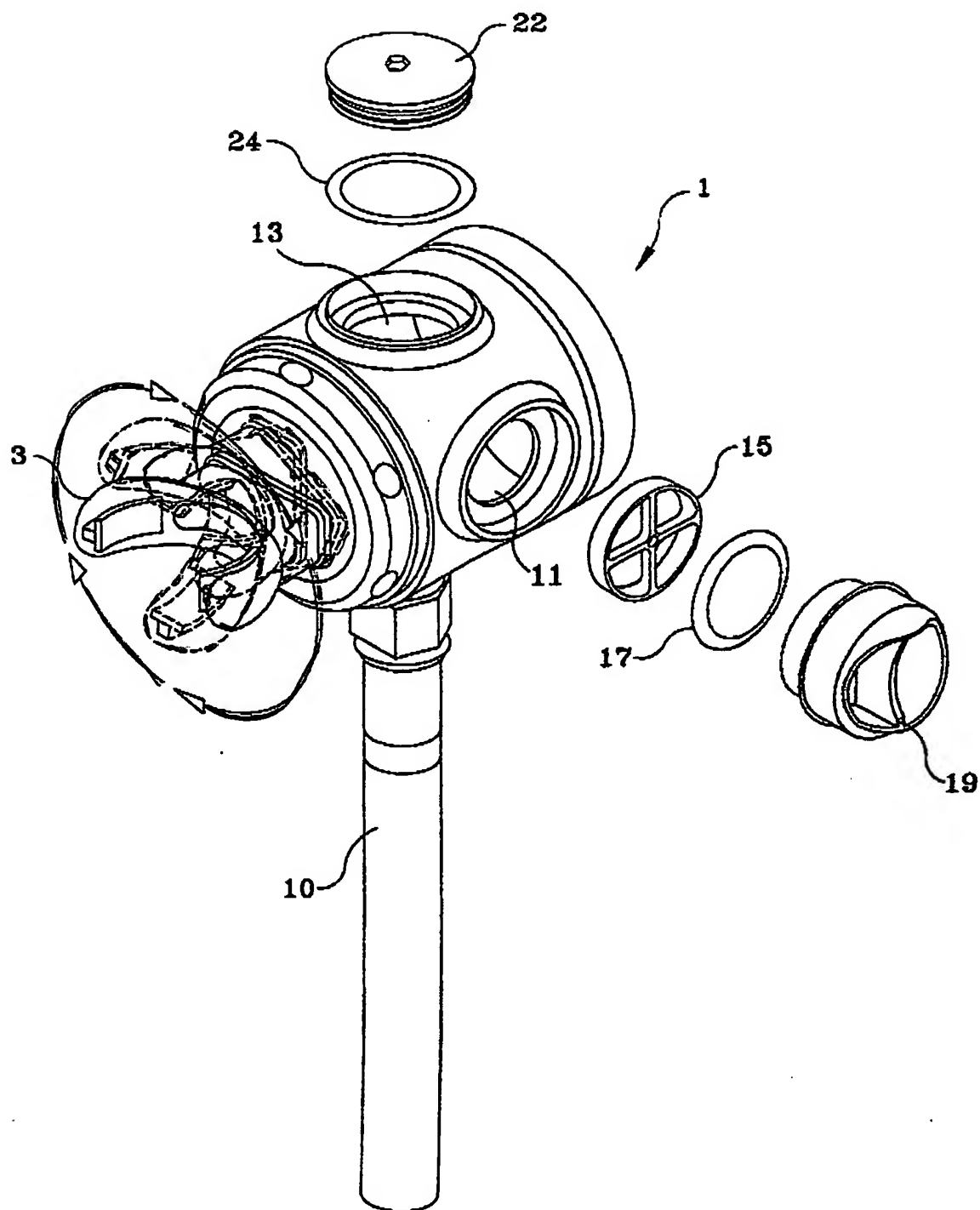


Figure 2